

MELINDA HAAG (CABN 132612)  
United States Attorney

J. DOUGLAS WILSON (DCBN 412811)  
Chief, Criminal Division

DENISE MARIE BARTON (MABN 634052)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7200  
Fax: (415) 436-7234  
Denise.Barton@usdoj.gov

Attorneys for the United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	Case No. CR 10-00519 RS
	)	
Plaintiff,	)	
	)	STIPULATION AND <del>[PROPOSED]</del> ORDER TO
v.	)	VACATE HEARING AND RESET FOR STATUS
	)	
JEFFREY L. PICKETT,	)	
	)	
Defendant.	)	
	)	

This matter is currently set for a hearing on a pending supervised release violation on Tuesday, November 25, 2014 at 9:30 am. From the Probation Department, the United States understands that the defendant is no longer residing at his last reported residence, appears to vacated the residence, and has failed to report a new residence or be in contact with his Probation Officer.

From defense counsel, the United States understands that defense counsel has not been successful in contacting Mr. Pickett in several weeks and that in light of his inability to reach his client, defense counsel is not prepared to proceed with the hearing on the supervised release violation.

The United States believes that Mr. Pickett is now a fugitive. Although the United States does not waive its rights to seek a hearing on the supervised release violation in the defendant's absence at a

future date,<sup>1</sup> in light of counsel's representation that he is not currently able to effectively prepare and stated intention to withdraw as counsel, the United States respectfully requests that the currently set November 25, 2014, 9:30 am hearing be vacated and that the matter be reset for Status on the Court's criminal calendar on Tuesday, November 25, 2014 at 2:30 pm for the Court. Defense counsel joins in the request.

Dated: November 20, 2014

Respectfully submitted,

MELINDA HAAG

United States Attorney

\_\_\_\_\_/s/\_\_\_\_\_  
DENISE MARIE BARTON  
Assistant United States Attorney

\_\_\_\_\_/s/\_\_\_\_\_  
EAN VIZZI  
Attorney for Jeffrey Pickett

~~[PROPOSED]~~ ORDER

Good cause having been shown, the Court hereby orders that the November 25, 2014, 9:30 am hearing be vacated and that the matter be reset for Status on the Court's criminal calendar on Tuesday, November 25, 2014 at 2:30 pm.

Dated: 11/20/14

  
HONORABLE RICHARD SEEBORG  
District Court Judge

<sup>1</sup> Pursuant to Rule 32.1(b)(2)(C) which governs supervised release hearings, a person may waive his or her right to a revocation hearing. Fed.R.Crim.P. 32.1(b)(2)(C). Because the defendant had notice of the hearing date from his prior appearances, Mr. Pickett's voluntary absence from the hearing may properly be construed as an effective waiver of his opportunity to appear under Fed.R.Crim.P. 43(c)(1)(B). Although Rule 43 does not explicitly reference supervised release hearings, a waiver pursuant to Rule 43 guides the analysis here. While a defendant on supervised release is not entitled to the full panoply of rights at a supervised release hearing, they do have the right to be present at a hearing. *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). However, as with trial and sentencing, the opportunity to appear may be voluntarily waived provided the defendant has sufficient notice of the hearing and that the absence voluntarily and knowingly occurs after the defendant has made an initial appearance. See *United States v. Houtchens*, 926 F.2d 824 (9th Cir. 1991) (finding that a trial defendant, on notice of his trial, had voluntarily waived his right to be present pursuant to Fed.R.Crim.P. 43(c)(1)(B)).